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Supreme Court, U.S.

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No. 95-1785

In The
Supreme Court of the United States
October Term, 1995

WILLIAM W. NESSON,

Petitioner,

v.

MAUREEN P. MCINTYRE,

Respondent.

On Petition For A Writ Of Certiorari
To The State Of Illinois Supreme Court

PETITIONER'S REPLY BRIEF

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QUESTIONS PRESENTED

Whether the Summary Dismissal of Petitioner's action violates Due Process of the Fourteenth Amendment of the United States Constitution.

Whether the issuance of a garnishment summons and resulting freezing of retirement accounts is a seizure under the Fourth Amendment of the United States Constitution.

REASONS FOR GRANTING WRIT

Respondent incorrectly changed the "question presented" to support the position that this Court lacks Jurisdiction. 28 U.S.C. § 1257 grants jurisdiction since the highest court of the State of Illinois has refused to hear the case, and the question presented is a federal issue claiming rights under the U.S. Constitution.

In *U.S. v. Jacobsen*, *U.S. Minn.*, 446 U.S. 109, 104 S. Ct. 1652, 1656, 80 L. Ed. 2d 85, 94, and *Soldal v. Cook County, Ill.*, 113 S. Ct. 538, 121 L. Ed. 2d 450, this Court defined seizure as "some meaningful interference with an individual's possessory interests in that property". The actual facts in those cases are only incidental to that definition.

There exists a conflict between the trial court and the U.S. Supreme Court. The trial court defined seizure as "to take hold of or take custody of the property" (App. 5a of petition for writ). Your Court defined seizure as "some meaningful interference with an individual's possessory interests in that property" *Jacobsen* and *Soldal*.

Respondent's contention that the Fourth Amendment does not apply because respondent is a private citizen is without merit. Respondent, an attorney, issued the garnishment summons as an officer of the court. Thus, the respondent's actions become governmental actions which would trigger the Fourth Amendment search and seizure considerations. Despite this, petitioner is seeking remedy under State of Illinois Statute 735 ILCS 5/12-1005 (West 1992) which provides remedy for the improper "taking or seizing" of exempt property by garnishment. It is petitioner's contention that 735 ILCS 5/12-1005 and the Fourth Amendment are identical in protecting against

unlawful seizures, and the definition of "seizure" as set forth in *Jacobsen* and *Soldat* should also apply to this Illinois statute.

The right to have disputes resolved in a court of law is the very essence of due process. Thus, there is a federal issue of rights guaranteed by the U.S. Constitution. Petitioner's claim that the issuance of a garnishment summons and subsequent freezing of the petitioner's retirement accounts is "some meaningful interference with an individual's possessory interest in that property" is a question that warrants a decision by trial. The summary dismissal was improper and violated petitioner's Fourteenth Amendment rights.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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